

1 any place?

2 THE WITNESS: That's correct, sir.

3 JUDGE SIPPEL: And what about the column on PN
4 Accept? What does that stand for?

5 THE WITNESS: PN is PCN Accept. That column I
6 could have had because that's the one that is -- that could
7 be -- no, that could be also after supplemental showing is
8 the way I could see that. That's when after the COMSEARCH
9 sent his information out and it will come back. That could
10 be the -- that's a public notice acceptance. And he would
11 have that. All the information here except --

12 JUDGE SIPPEL: I know he has it. What I'm saying
13 is do you --

14 THE WITNESS: No, I wouldn't.

15 JUDGE SIPPEL: -- do you have that information as
16 in February -- I'm sorry, in April of '95, did you or
17 anybody else at Liberty have that information? I'm taking
18 this line-by-line.

19 THE WITNESS: Yes. The public notice, I wouldn't
20 have that.

21 JUDGE SIPPEL: You don't have that.

22 THE WITNESS: Yes, because the supplemental
23 showing would have gone directly to him or --

24 JUDGE SIPPEL: The path name, that certainly you
25 would have.

1 THE WITNESS: Yes, I would have that. I would
2 have the path names and --

3 JUDGE SIPPEL: The type?

4 THE WITNESS: I don't know what is the -- no,
5 these are the types that he had on his MA and -- I don't
6 know what the -- oh, I think if I recall, M means modified.
7 Those are just the type that he used about modified
8 applications which added one. A, I don't know what does
9 that mean.

10 JUDGE SIPPEL: You don't know what the A means?

11 THE WITNESS: No.

12 JUDGE SIPPEL: Okay. But your M is modified.

13 THE WITNESS: Yes, because I remember some that he
14 was talking to me about that. There's some modification.

15 JUDGE SIPPEL: And the status, that seems to be
16 pretty self-evident.

17 THE WITNESS: Whether it's granted or pending.

18 JUDGE SIPPEL: Or pending. Did you -- now, that
19 again is information that -- nobody in Liberty had that
20 information.

21 THE WITNESS: That's correct.

22 JUDGE SIPPEL: And then what is this? The PD
23 date? Is that a --

24 THE WITNESS: That -- I still don't know what is
25 that.

1 JUDGE SIPPEL: Do you know what PD date is?

2 THE WITNESS: No. I don't know what. I've got to
3 go over this closely just to remember what was it at the
4 time that we were talking about it. Oh, I think it's the
5 petition denied. I think that's part of it. I mean
6 that's -- that's what I can remember that. If you'll
7 notice, all of these have the date of 1/9. And I think I
8 found it at some point that Time Warner denied those
9 applications.

10 JUDGE SIPPEL: Well, Time Warner can't deny the
11 applications. But those are the dates that Time Warner
12 filed their petition?

13 THE WITNESS: Their petition. That's is.

14 JUDGE SIPPEL: All right. We can't talk together.
15 All right? That's the date that Time Warner filed the
16 petition, right?

17 THE WITNESS: That's -- that's what I think.

18 JUDGE SIPPEL: Now, did you have that -- that was
19 January of '95. Did you have that date at Time Warner --
20 I'm sorry, at Liberty -- did you -- did Liberty -- when I
21 say Liberty, I mean you or Mr. Ontiveros or Mr. Price or
22 anybody in that group that you're closely associated with,
23 did they have that information about January 9, 1995, that
24 there were Time Warner petitions?

25 THE WITNESS: I know I wasn't aware until late in

1 April. But I don't know if they were.

2 JUDGE SIPPEL: You don't remember any
3 conversations on or about this -- this April 28th
4 information of Lehmkuhl? Whether that subject came up as to
5 who had -- who at Liberty knew about these January
6 petitions?

7 THE WITNESS: I -- I didn't ask Mr. Lehmkuhl.

8 JUDGE SIPPEL: I didn't say somebody asked you.
9 No. I'm saying in this conversation with Mr. Ontiveros, Mr.
10 Milstein, Mr. Price, this was an important meeting. Did it
11 come up at all that we've had this?

12 THE WITNESS: No.

13 JUDGE SIPPEL: Did anybody suggest that they knew
14 about these petitions?

15 THE WITNESS: Well, the meeting that we had that I
16 was in there was only about what was the status of these
17 buildings; why wasn't special temporary authority being
18 applied to it. And the list of the buildings, and that was
19 the explanation I gave them. That because of the technical
20 part of it, emission designator and other things, these
21 things were not applied. We never -- at that meeting, we
22 never talked about any petition.

23 JUDGE SIPPEL: But it was -- as I understood your
24 earlier testimony, it was as a result of a Time Warner
25 petition or some segment of a petition that came to your

1 attention that prompted you to call Mr. Lehmkuhl to get this
2 information.

3 THE WITNESS: That's correct. But we never -- at
4 that meeting with the corporate people, we never talked
5 about that particular subject.

6 JUDGE SIPPEL: All right. Well, what about before
7 that meeting? How about at or about the time that you
8 received this information? And you said you received it
9 from an internal fax.

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: What was known amongst your group
12 or the people that you work with about the Time Warner
13 petition that it would prompt you to raise these questions?

14 THE WITNESS: Well, all I knew was that the
15 information had come out. It mentioned that Time Warner had
16 petitioned against some of the paths. And then when I found
17 out -- went through to find out which one of those paths
18 were the ones, then I found out that there were some of
19 those paths that we were activating here. And at that
20 point, that was the first time I found out about Time
21 Warner's petition on all the paths, after I -- after I
22 investigated through that particular document that I have.
23 And after my discussion with Mike Lehmkuhl, he told me that
24 there was a petition on January 9 -- in January against all
25 Liberty's paths.

1 JUDGE SIPPEL: Yes, but you knew that -- you knew
2 about a petition from Time Warner thought before you --
3 before you received Mr. Lehmkuhl's memorandum.

4 THE WITNESS: Oh, yes. The same day that I found
5 out, that's the same day my conversation with Mr. Lehmkuhl
6 was. I found out and an hour later, I called him. And I --

7 JUDGE SIPPEL: Yes, I guess I'm going -- well,
8 again, I want to know how you found out. You found out
9 through a fax that came to you internally.

10 THE WITNESS: That's correct.

11 JUDGE SIPPEL: Did somebody call you and say I'm
12 faxing you over some information?

13 THE WITNESS: No. Generally the information would
14 come on the fax whether it would come from --

15 JUDGE SIPPEL: Well, this might be -- certainly if
16 you come across a fax machine that there's going to be an
17 office party in a week or something. But this is something
18 that's got a little bit of different significance to it.
19 Didn't somebody call you and say, hey, I've got some
20 information here I want you to take a look at; I'm going to
21 fax it over to you? Did that -- anything like that happen?

22 THE WITNESS: I -- I don't remember that I -- I
23 talked to anybody about it. But I knew that the list that
24 came out had in it the explanation of the -- some of these -
25 - that there were certain paths where -- where petitions to

1 it that they should not be turning it on.

2 JUDGE SIPPEL: I don't think you understand my
3 question. I'm trying to determine from you is what were the
4 -- what prompted this list to come in to your office through
5 your fax machine? What happened before that, if anything,
6 to let you know that it was coming in?

7 THE WITNESS: I don't know anything before that.
8 I just know that this thing came up.

9 JUDGE SIPPEL: It just came up?

10 THE WITNESS: Came up -- and the reason it came up
11 -- the person -- the way it came up was that it came up and
12 said that these are the -- these are the -- the petition
13 that are coming up are -- how I put it in words -- this is
14 coming up and they say we are unauthorized. And I had to go
15 investigate and find out why.

16 JUDGE SIPPEL: But, Mr. Nourain, see, the
17 difficulty I'm having is is that I -- I -- in the normal
18 course of events, that kind of instruction or that kind of
19 information would -- would not just come to you out of a
20 machine without somebody letting you know at the same time
21 or just before that that you were getting something, that
22 you were getting something of this nature. It's hard to
23 understand how this all of a sudden just appeared in your
24 machine one day without you being able to explain more about
25 how it came to you.

1 THE WITNESS: No. It came up -- I know that it
2 came up internally. It might have come --

3 JUDGE SIPPEL: Yes, but by who? When you say
4 internally, that -- can you -- can you attach a name and a
5 face to that?

6 THE WITNESS: It would come from 575 Madison. So
7 it might have come from Mr. Price's office. It might have
8 come from somewhere.

9 JUDGE SIPPEL: You don't have any idea.

10 THE WITNESS: I don't have -- because I didn't
11 have the actual cover letter for it.

12 JUDGE SIPPEL: Well, just the data?

13 THE WITNESS: Just the data that said that these
14 are the things and just find out that these are the things.
15 And I -- after I got that, I went and tried to find out that
16 if it is correct or not. But I know that there was
17 something that had the name of Time Warner on it because
18 that prompted me to ask Mr. Lehmkuhl what is the petition --
19 that was the first time I heard about the petition to deny
20 or the reason that Time Warner --

21 JUDGE SIPPEL: Well, that's -- okay. That's --
22 let me just -- let me just stop you there just a minute.
23 Has this fax been produced in discovery, whatever it is
24 called?

25 MR. SPITZER: Your Honor, I don't know if you want

1 me to say this in front of the Witness or not. Maybe --

2 JUDGE SIPPEL: Well, maybe you better -- yes,
3 would you -- let's go off the record. I'm going to ask you
4 step outside. Just step outside this door.

5 (A discussion was held off the record.)

6 JUDGE SIPPEL: Let's go back on the record.

7 MR. SPITZER: The answer is no, we have not been
8 able to find any such fax which sort of fits Mr. Nourain's
9 description of what triggered this recollection which he's
10 been describing. Obviously, the Witness -- his files have
11 been searched by our own eyes and very, very carefully.

12 JUDGE SIPPEL: Yes.

13 MR. SPITZER: There is -- and I know Mr. -- Mr.
14 Beckner and all counsel have it -- an April 26th memorandum
15 from Mr. Nourain to Mr. Milstein which discusses the
16 emission designator error and has on it a list of the
17 various buildings, most of which are at issue here. And I
18 raise that not to say that that is the fax, but merely to
19 say that that is perhaps the only -- the closest thing that
20 we can imagine that might be this document or something
21 related to it.

22 There was also an April 24 letter from the FCC to
23 Mr. Nourain which relates to the denial of certain licenses
24 or STAs -- I'm not sure it's clear from the text of the
25 letter -- which had preliminarily been granted as of May

1 2nd, but then were withdrawn because of a Time Warner
2 petition to deny. That letter -- and again, I don't wish to
3 testify -- but that letter is date stamped internally to the
4 FCC April 24. It speaks -- the verb tense in the letter is
5 very bizarre. It speaks prospectively on April 24 about the
6 denial of the license that apparently was granted as of May
7 2nd as a result of the petition to deny. The syntax in the
8 letter is somewhat difficult to follow.

9 The -- when that letter was received by Mr.
10 Nourain is unclear. It was apparently mailed by the FCC on
11 the 24th. So the sequence -- and again, I don't wish to
12 testify -- is that letter on the 24th, the memo on the 26th
13 to -- to Mr. Milstein and the document that we are -- that
14 is now before Your Honor on the 28th. Beyond that, there is
15 -- there is nothing.

16 JUDGE SIPPEL: Well, this letter that you've just
17 described, is it -- who initiated the -- is that a Time
18 Warner letter to the Commission a copy of which was sent
19 to --

20 MR. SPITZER: No, Your Honor. It --

21 JUDGE SIPPEL: -- Liberty?

22 MR. SPITZER: -- it is --

23 JUDGE SIPPEL: A letter from the --

24 MR. SPITZER: -- a letter from the FCC itself.

25 I'm sorry? It references that Time Warner petitions to deny

1 and says as a result of the fact of the petitions to deny,
2 we the FCC are withdrawing a grant of a license that we had
3 given you improperly.

4 JUDGE SIPPEL: It's not a 308 request. It's
5 just --

6 MR. SPITZER: No, sir. No, sir. It is merely a
7 retraction of a grant of a license.

8 MR. HOLT: Your Honor, the documents that Mr.
9 Spitzer is referring to I believe are contained in the
10 materials that were produced to us yesterday, the April 26 -
11 - the April 24 letter from the Commission and the April 26
12 memo that Mr. Nourain apparently created and gave to Mr.
13 Milstein. I've never seen a document that appears to have
14 been generated by someone else and sent to Mr. Nourain with
15 a list of sites to check out.

16 MR. SPITZER: There is no such document as far as
17 we know.

18 JUDGE SIPPEL: Well, this -- obviously, this
19 Witness doesn't have a fog as to how he got this stuff. And
20 it's like -- you know, it's like the Zimmerman telegram. I
21 mean, this is not something that just is routine information
22 obviously. I mean, it -- look what it prompted. And he --
23 you know, he's going uptown to a meeting the next day. And
24 yet he doesn't have a clue. Something is just churned out
25 of his machine, these numbers. And then all of a sudden it

1 prompted him to do stuff.

2 MR. SPITZER: Well, Your Honor, I -- we agree
3 entirely. Confusion is not entirely a new word with respect
4 to Mr. Nourain perhaps. We wish there were a document that
5 we could present to the Court. It would solve many
6 questions which we would love dearly to solve. This is the
7 sequence of documentation as best we have been able to -- to
8 recreate it.

9 JUDGE SIPPEL: Well, all right. I just --

10 MR. SPITZER: Do you wish -- Your Honor --

11 JUDGE SIPPEL: -- want to be sure that nothing
12 is -- nothing has slipped through the cracks here. I mean,
13 obviously, he's -- his testimony is very clear. He has a
14 very definite recollection that something came out of his
15 fax machine which prompted him to do -- to take the next
16 steps including calling Mr. Lehmkuhl. But he doesn't have
17 any idea --

18 MR. SPITZER: The closest we can hypothesize, Your
19 Honor, is the April 24 letter from the FCC. But it's not a
20 fax and it's not a list of buildings. But it does reference
21 the Time Warner petitions as having led to the denial of
22 some licenses. So -- but we're speculating.

23 JUDGE SIPPEL: It's -- I'm sorry. I didn't mean
24 to cut you off. What it's telling me is, obviously, whether
25 it was an FCC letter or something else, something was

1 generated by somebody -- some responsible agent at Liberty
2 that was put in a fax machine and sent to this Witness, now,
3 if I'm to believe what he's telling me. And I have no
4 reason at this point to disbelieve what he's telling me.
5 That's how he got that information. Now, that's significant
6 information. And somebody in some position of authority at
7 Liberty had to have sent it to him.

8 MR. SPITZER: Your Honor, all I can say is that if
9 indeed there was such a fax, what you're saying is
10 absolutely correct. Again, Mr. Nourain may be -- and I
11 don't say this as -- what I'm about to say is correct, but
12 he may be combing one of the various documents along these
13 paths that we have been able to corroborate because we have
14 the April 28 memorandum from Mr. Lehmkuhl. We know there
15 was the April 26 memorandum to Mr. Milstein which discusses
16 the emission designator error and then the lack of licenses
17 for a list of buildings.

18 And then there is the April 24 letter from the
19 FCC. And each of them has pieces of what he is describing
20 as one -- one includes Time Warner petitions, one has the
21 list of buildings. I'm not saying this is what it is. But,
22 again, we have struggled mightily to recreate these pieces.
23 And those are -- appear to be the material documents within
24 this time frame.

25 JUDGE SIPPEL: Well, it's -- as I say, it's not --

1 I mean, that's important, everything that you've just
2 outlined. But what leaves -- what still remains unanswered
3 and I think is a very critical question to this whole thing
4 is who is the agent at Liberty that sent this to Mr.
5 Nourain. It almost sounds like, you know, the jig is up so
6 they stick the hot information with this particular Witness.
7 And he doesn't know who's given him this information, but
8 he's got to do something about it.

9 MR. SPITZER: Well, Your Honor, not to say that
10 that isn't a plausible interpretation that one could impose
11 on these facts. We obviously would not say that that is --
12 the inference that we believe would be drawn. We just
13 think, quite frankly, that his recollection about what
14 triggered his memory may be off. And -- but, Your Honor,
15 all we can say is we have gone through these files at every
16 level. And this is the sequence of documentation.

17 The letter from the FCC on the 24th -- and again,
18 the problem with that letter in terms of how it fits is that
19 if it was mailed on the 24th, we have no reason to believe
20 quite frankly that it was received by the 26th. Given the
21 U.S. Postal Service operations, I'm not sure if it was or
22 wasn't. But if it had been -- if it had been received by
23 Mr. Nourain by the 25th or the 26th, then that might be the
24 logical -- the impetus behind this.

25 JUDGE SIPPEL: Yes, but, see, in a situation like

1 this with this information being so critical, we shouldn't
2 have to hypothesize to that. I mean, did he -- we haven't
3 asked him the question, what did he do with -- the next
4 question is what did he do with the fax after it came out of
5 his machine and he picked it up in his hands. He can
6 account for that. But I -- I mean whether this information
7 was information that was generated from the FCC, came to
8 Liberty's attention and then was faxed to Mr. Nourain to
9 take a look into it or to get his act together, that would
10 be explanation A.

11 But we don't have explanation A. All we have is
12 some mysterious things are happening. And he doesn't know
13 who's telling him -- at least as he's sitting here today, he
14 can't -- he can't tell us what's happening. And you don't
15 have a document -- you -- you, not you personally, but
16 Liberty doesn't have a document trail to go back up the line
17 and find out just how that was all generated. So we don't
18 know what date it was generated. We don't know what date
19 that information was resting someplace at Liberty.

20 MR. SPITZER: You're absolutely correct, Your
21 Honor. And that is why, quite frankly, if you -- if I
22 needed to say what the flaw is in this reason, I don't --
23 I'm not sure that fax ever existed. I think he may have
24 sort of compressed various events into this one fax that he
25 is now recalling because there are various pieces of these

1 documents within it. And there simply is no copy of that
2 fax anywhere or anyplace whether it's from Mike Lehmkuhl,
3 whether it's corporate headquarters, whether it's Mr.
4 Nourain's own files. And so we are -- we more than anybody
5 would wish to clarify this. And yet there is no apparently
6 answer.

7 JUDGE SIPPEL: Mr. Beckner?

8 MR. BECKNER: Your Honor, I -- I -- I can't
9 contain myself from commenting that we have here a lawyer
10 who has filed a motion with the Presiding Judge for summary
11 decision who has just now impeached his own witness and said
12 his own witness made something up about a fax. And I just -
13 -

14 JUDGE SIPPEL: Now, wait, Mr. Beckner.

15 MR. BECKNER: -- or that maybe he made something
16 up or maybe he imagined it. But substantively, I want to
17 say a couple of things. When the Witness comes back in
18 terms of these dates, he previously testified in deposition
19 that he first knew something about this on April 20th. And
20 I'm going to ask him about that date again which if he still
21 says, yes, that's the date, that's obviously in advance of
22 this FCC letter that Mr. Spitzer was discussing with you.

23 Secondly, I just want to note that -- that as I
24 think I told you yesterday, we kind of glanced through these
25 documents that we were just given yesterday. But I haven't

1 had the time to go back and cross-check each of the numbers
2 to make sure that in fact that -- I mean, I don't know that
3 this emission designator problem relates to all of these
4 paths or just some of them.

5 You know, I see file numbers mentioned on Mr.
6 Lehmkuhl's memorandum of April 28 which only accounts for
7 three of the unauthorized activations on Appendix A. And
8 I'd like to have a chance to do that before I take the
9 Witness into these documents which we just got yesterday.
10 And I'm explaining to you why I'm not doing that today.

11 JUDGE SIPPEL: All right. Well, I think we better
12 -- you better alert Mr. Nourain he may -- he's probably
13 going to have to come back next week. And I really want --
14 I want counsel to sit down with these officials at Liberty
15 and explain to them what my concern is. I mean, maybe if
16 they hear it that way. I'm not saying that they're hiding
17 anything. What I'm saying is is that something -- there's a
18 chunk of information here that's missing that shouldn't be
19 missing.

20 I mean, in the normal course of events, that
21 should be able -- and what's at stake here -- and this is
22 what everybody keeps telling me -- is that, my God, this
23 is -- the whole thing is at stake and we've -- we're doing
24 this audit and that audit and this thing and that thing.
25 And yet nobody can explain -- this poor man is working 60

1 hours a week doing -- after he explained what he did
2 yesterday, I mean he's an amazing feat. And yet he's
3 getting this kind of information to deal with and doesn't
4 know who from the chain of command is sending this down to
5 him. And he's got to figure it out. Something doesn't
6 strike me as being right there.

7 MR. WEBER: Your Honor, would you like the Bates
8 number of these documents Mr. Spitzer was referring to read
9 into the record? Do you think it would --

10 JUDGE SIPPEL: Yes, I think that would be a good
11 idea.

12 MR. WEBER: The April 24th letter from the FCC is
13 Number 17317 through 319.

14 JUDGE SIPPEL: 17317 through 319?

15 MR. WEBER: Yes. And then there's two copies of
16 the April 26th memo from Mr. Nourain to Mr. Ed Milstein.
17 And one copy of it is 17311 through 312 and the other is
18 17360 through 361.

19 JUDGE SIPPEL: 17360?

20 MR. WEBER: Right.

21 JUDGE SIPPEL: Through?

22 MR. WEBER: 361.

23 JUDGE SIPPEL: Now, that's the April 26th --

24 MR. WEBER: Memo.

25 JUDGE SIPPEL: -- memo from Mr. Nourain?

1 MR. WEBER: Right.

2 JUDGE SIPPEL: To whom?

3 MR. WEBER: Mr. Ed Milstein.

4 JUDGE SIPPEL: Okay. Do you think that sheds some
5 light on this?

6 MR. WEBER: Well, it obviously can't be what Mr.
7 Nourain himself was sent since he was the preparer of this
8 memo. So I mean it can't be what he received in order to
9 request Mr. Lehmkuhl to prepare that April 28th memo. He --
10 this has made -- the Bureau finds this document fairly
11 interesting because it does list a number of paths --

12 JUDGE SIPPEL: Which one are you talking about?

13 MR. WEBER: The April 26th memo.

14 JUDGE SIPPEL: This is Number 30 -- Tab 34 we're
15 talking about?

16 MR. WEBER: No.

17 JUDGE SIPPEL: No?

18 MR. WEBER: No, what -- that -- what I'm saying is
19 I find it unlikely that the April 26th memo prepared by Mr.
20 Nourain to Mr. Edward Milstein, it's unlikely that that is
21 what he is referring to that he received which, you know,
22 inspired him to request the TW/CV 34 from Mr. Lehmkuhl
23 because Mr. Nourain himself prepared this April 26th memo.

24 JUDGE SIPPEL: Exactly. Something --

25 MR. WEBER: Right, and -- I guess it would also be

1 the FCC letter -- the April 24th letter from the FCC is
2 actually from the Gettysburg office, not from the Washington
3 office.

4 JUDGE SIPPEL: Not from the Washington office.

5 MR. SPITZER: That's where the licenses were
6 actually -- were handled.

7 MR. WEBER: No, that's correct. Right.

8 MR. SPITZER: And I believe -- well, again, we're
9 in the realm of speculation, Your Honor, which again we
10 don't -- we more than anybody else would like to avoid. But
11 we think that the sequence is significant because on the
12 26th, Behrooz sends to Edward Milstein -- it says, "With
13 reference to our phone conversation, enclosed please find a
14 copy of the paths that were delayed due to emission
15 designator errors", which is one of the issues that Mr.
16 Nourain has been talking about.

17 And the list on that memorandum, this is the April
18 26th memorandum, has a very substantial overlap with the HDO
19 buildings; closer -- or as close in fact as I think the
20 April 28 memorandum. And the -- the letter that Mr. Nourain
21 received at some point, when he received it we don't know.
22 We know it was mailed -- I believe, Mr. Weber, this is an
23 appropriate interpretation -- the April 24, '95, isn't that
24 stamped an FCC internal stamp --

25 MR. WEBER: Yes, it is.

1 MR. SPITZER: -- on the -- okay. So it was mailed
2 by the FCC on the 24th. Again, it refers to the Time Warner
3 petitions in opposition. So --

4 MR. HOLT: It also bears a note, Your Honor,
5 indicating that it was forwarded to Mr. Milstein on May 3rd
6 which could suggest that if he would have received it on May
7 3rd, he would have forwarded it that day. That's Mr. -- Mr.
8 Nourain's initials I believe on the face of that letter.

9 JUDGE SIPPEL: Well, that --

10 MR. SPITZER: Which document are you referring to,
11 Mr. Holt?

12 MR. WEBER: Actually, yes, the April 24th letter
13 was actually forwarded to Peter Price and to Tony Ontiveros.

14 MR. HOLT: Oh, I'm sorry. Peter Price --

15 MR. WEBER: On May 3rd.

16 MR. SPITZER: That's correct.

17 MR. HOLT: Document Number 0172424.

18 JUDGE SIPPEL: May 3rd, that letter -- that April
19 24th document was forwarded to Ontiveros?

20 MR. HOLT: There's a --

21 MR. SPITZER: Peter Price and Tony Ontiveros, Your
22 Honor. There's a slash -- POP/TO FYI, and signed with the
23 initials BN on May 3rd.

24 JUDGE SIPPEL: Well, that -- if -- and of course,
25 I'm speculating here along with everybody else. But if the

1 April 24th letter came from Gettysburg to Liberty's offices
2 in downtown Manhattan -- or mid-town Manhattan --

3 MR. SPITZER: Your Honor, it was addressed to Mr.
4 Nourain at Ninety-fifth Street.

5 JUDGE SIPPEL: Oh, it went right to him?

6 MR. SPITZER: Yes, Your Honor, at the 215 East
7 Ninety-fifth Street address.

8 JUDGE SIPPEL: But he said there was fax
9 information.

10 MR. SPITZER: Well, Your Honor, this is why our
11 best effort to try to decipher this maze, to wind our way
12 through this maze, is to believe that this recollection he
13 has is somehow a compression of these various documents.

14 JUDGE SIPPEL: Did he testify in his deposition
15 about getting this fax, this mysterious fax?

16 MR. BEGLEITER: He said -- I think he said it was
17 an internal document. I don't recall whether he said fax or
18 not.

19 JUDGE SIPPEL: Yes, he did. He said it was an
20 internal -- and it was an internally generated fax. It was
21 not coming from Mr. Lehmkuhl. And it just came out of his
22 machine. And he can't identify from whom --

23 MR. BEGLEITER: No, no. Here he did.

24 JUDGE SIPPEL: It didn't have a cover. Oh, I'm
25 sorry. In his previous deposition.

1 MR. BEGLEITER: In his deposition. Yes, I don't
2 remember whether he said it was a fax. He did say he got
3 the document internally. You know, Judge, I -- I'll just --
4 what Mr. Spitzer has said. I -- you know, we wish we had a
5 cohesive explanation. There's another document here that --
6 that would confuse matters and that is the May 5th
7 submission by Time Warner where Time Warner for the first
8 time lists two buildings that are -- that are -- that are
9 unauthorized.

10 And I don't know whether Mr. Nourain is confusing
11 that fax with whatever information he got the week before.
12 Clearly a lot was going on the last week in April. We can
13 see that from these documents. He -- and clearly he
14 remembers the meetings with these -- with these other folks
15 in his company. So there's no question that by the last
16 week in April, they all knew. And we've always said that.
17 This has been a consistent position of this -- of Liberty's.

18 JUDGE SIPPEL: What day of the week was the 24th?
19 Does anybody know?

20 MR. BEGLEITER: The 28th was a Friday. So the
21 24th must have been a Monday.

22 MR. HOLT: Your Honor, I also believe there was
23 testimony in the deposition where he identified April 20th
24 as the day he received it.

25 MR. BEGLEITER: Well, Your Honor, that -- I'll

1 read it to right now, Your Honor. What he said -- well, he
2 was asked the question, "Did there come a time when" --
3 this is on page 76 of the deposition starting at line 18. I
4 believe it's Mr. -- Mr. Weber's questioning.

5 MR. HOLT: Which date of the deposition?

6 MR. BEGLEITER: This is the first deposition.

7 MR. WEBER: May 29.

8 MR. BEGLEITER: Right. He says, "Did there come a
9 time when you learned that Liberty had been operating
10 certain facilities without FCC authorization?" Answer:
11 "Yes." "At what point did you learn this?" Answer: "About
12 April 20th, end of April 1995."

13 That's not the same thing as saying he knew about
14 it on April 20th. He was saying -- you can see the way he
15 speaks. What he actually said was about April 20 -- end of
16 April 1995. I don't think he meant to say -- and we can ask
17 him -- that he meant on April 20th he knew. And if he did -
18 - if he did know on April 20th, which I doubt, I don't think
19 that would change anything. But he didn't. He knew -- he
20 knew that week. Sometime the week of the 24th is when he
21 found out. And that's the week when everybody finds out.

22 MR. HOLT: Well, I'd like to note that April 20th
23 is a fairly specific date for him to come up with that out
24 of the blue.

25 MR. BEGLEITER: He doesn't say April 20th.

1 MR. SPITZER: If you just look at the transcript
2 notes --

3 MR. HOLT: I thought he said April 20th, end of --
4 about --

5 MR. SPITZER: End of April, April --

6 MR. HOLT: -- beginning to get foggier. But that
7 was the first date that popped to mind.

8 JUDGE SIPPEL: Well, I -- now, I mean, I can --
9 this is my job is to assess this Witness and all the other
10 witnesses. And I do -- I obviously -- I understand that Mr.
11 Nourain is -- he's at -- let's say somewhat at a
12 disadvantage because of his -- you know, because of his
13 inability to maybe handle the English language with the ease
14 and fluidity of certainly take his boss, Mr. Milstein. I
15 mean, we're not dealing with the same type of person. I
16 recognize that.

17 But on the other hand, something is just amiss
18 here. And he has launched off into these highly, highly
19 significant tasks. And there's no way of tracing who's --
20 who's pushing the -- you know, who's pushing him to go in
21 what direction.

22 MR. BEGLEITER: Your Honor, you're assuming
23 something that -- that he hasn't said. You're assuming that
24 when he first learned of this, it was pointed out to him
25 that these paths were -- were somehow -- there was something